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| TO | Law Society Council |
| DATE | 1 July 2022 |
| FROM | Seamus McGrath |
| RE | Solicitors Accounts Regulations |

The deadline for submissions on the draft Solicitors Accounts Regulations (“the Regulations”) is 29 July 2022. On the basis of the submissions to date, it is considered appropriate to clarify the following matters to avoid any misunderstanding of the draft regulations.

**Regulation 1 – Retrospective Effect**

An issue was raised as to whether the Regulations would have retrospective effect.

The Regulations do not have retrospective effect. The Regulations will apply from a date to be specified in the Regulations (“the commencement date”) and the 2014 Regulations shall continue to apply in respect of any accounting period that commenced before the commencement date in the Regulations until a reporting accountant’s report is provided. The commencement date provision in the new draft regulations is identical to that contained in the 2014 Regulations (Regulation 1) and will operate on the same basis.

**Regulation 2 – Definition of “Employed Solicitor”**

The purpose of the use of the definition is to exempt a specific category of solicitors from the obligation to comply with the Regulations. In that regard, Regulation 3 provides that “employed solicitors” are exempt from the Regulations. In the 2014 Regulations, only partners or principals were the subject of the obligations of the Regulations and any solicitor who was not a partner or principal was excluded from the ambit of the Regulations. However, this led to a concern that a non-partner solicitor could act in such a manner which, if he or she was a partner, would be a breach of the regulations but, because of their title, they could escape regulatory responsibility. Therefore, it is proposed to narrow the exemption for employed solicitors to only exclude non-partner employed solicitors who do not handle client moneys. The effect of this is that, if the non-partner solicitor does handle client moneys, they are not exempt and must comply with the Regulations.

**Regulation 7(1)(a) – Transfers of fees to the office account**

The obligation under Regulation 7(1)(a)(ii) and (iii) is, subject to Section 149(2) of the 2015 Act, simply to provide prior written notice to the client that moneys in the client account are being used to discharge fees and/or outlay. The Regulations do not limit the solicitor in the manner in which this can be done.

Unless S149(2) of the 2015 Act applies, a solicitor may comply with the obligation under Regulation 7(1)(a)(ii) and/or (iii) by writing to the client or including the relevant notice in a Section 150 letter, a bill of costs, or elsewhere, provided it is done prior to withdrawal. There is no obligation to provide an additional Section 150 letter notifying the client in writing that moneys are being transferred from client to office account, provided that the client has been given prior notice in writing.

**Regulation 9(3) – Evidence of payments in cash**

The 2014 Regulations prohibit the direct withdrawal of moneys from the client account other than by cheque or electronic transfer and that will continue. The 2014 Regulations did permit a solicitor to draw a cheque made payable to cash or draw a cheque made payable to the client and then the solicitor and the client could attend at the bank and cash the cheque. There is no change proposed to this in the Regulations. The additional regulation imposes an obligation on solicitors who withdraw moneys from the client account for the purpose of making a payment in cash to obtain documentary evidence of payment of such moneys, such evidence to include the witnessed signature of the recipient of such moneys. This is to ensure that there is an appropriate record of cash transactions on the client account but it is acknowledged that a de minimus threshold of €100 should apply here.

**Regulations 11/13 – Office account transactions**

There are no increased obligations on solicitors in relation to the recording of office account transactions. Regulation 11 remains as set out in the 2014 Regulations. The information to be recorded in respect of office transactions is the same as currently applies under the 2014 Regulations. Under the 2014 Regulations, the term “cash book” was always interpreted to mean a record of all office receipts and payments. The Regulations are simply moving away from the phrase “cash book” to a “record of office receipts and payments”. The purpose of this is purely to move to contemporary accounting terminology.

**Regulation 13(8)(e) – Review of client balances for undue or unnecessary delays**

The Regulations require a solicitor to review the listing of client balances for undue or unnecessary delays in dealing with client matters and, where the listing discloses undue or unnecessary delay in dealing with client matters, the solicitor is required to take immediate action to deal with those matters. No action is required in respect of balances in respect of which there have been no undue or unnecessary delays in dealing with client matters.

It is important to note that, under this regulation, the solicitor is only required to take action to address client balances where the listing discloses undue or unnecessary delay in dealing with client matters. Where there is a specific reason for the client balance to arise which demonstrates no undue or unnecessary delay, the solicitor is not required to take any action and is not in breach of the Regulations for not taking action.

Further, where there may be undue or unnecessary delays, if a solicitor takes action to return client moneys by, for example, writing a cheque to the client for those moneys, the fact that the client does not accept the cheque or has not cashed the cheque does not mean that the solicitor has breached the regulations. In this scenario, the solicitor has taken action as required by the Regulations and will, therefore, have complied with Regulation 13(8)(e), notwithstanding the failure or refusal of the client to cash the cheque.

**Regulation 13(8)(f) – Obligation to list client ledger balances outstanding two years**

The Regulations require a solicitor to list client ledger balances outstanding two years or more. There is no obligation to take action in respect of those balances where there have been no undue or unnecessary delays in dealing with those matters. The obligation under Regulation 13(8)(f) is only to provide a list to the Society, approved by the compliance partner. The regulation does not contain any other obligation in relation to balances two years or more outstanding and there is no general or automatic requirement in Regulation 13(8)(f) to clear balances outstanding for two years or more.

**Regulation 25 – Source of moneys received**

The requirement to record the source of moneys received held or paid into the client account is an obligation to record the identity of the person (natural or legal) from whom moneys have been received directly by a solicitor for or on behalf of a client.

The purpose of the regulation is to address a practice of some solicitors of only recording the client in respect of whom moneys are received rather than recording the identity of the person who provided the money to the solicitor. The purpose of this amendment is to ensure solicitors accurately record the source of funds lodged to the client account.

Obligations of solicitors to enquire into source of funds and/or source of wealth of clients under money laundering legislation are not addressed in the Regulations. The obligation under the regulations is to record the source of the funds received held or paid. If a solicitor receives money from a client, the source of the money is the client and that should be recorded in the book of account. If a solicitor receives money directly from a person other than the client, the regulation requires that the identity of the third party be recorded in the books of account.

**Regulation 42 – The requirement to keep moneys in the State**

It should be noted that the requirement to keep client funds in a bank account in the State is a primary legislative obligation under the Solicitors Acts 1954-2015 (per Section 75(3) of the Solicitors (Amendment) Act 1994) and the Regulations merely reflect this obligation. Any attempt to allow moneys to be held outside the State in the Regulations would be ultra vires the Society.

Further, it has always been a requirement that client funds are kept in a bank account situate in the State. High Court orders to protect client moneys only apply to bank accounts situate in the State.

End of Memo